

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL
DISTRICT AND CALIFORNIA SCHOOL
FOR THE DEAF.

OAH Case No. 2014040069

ORDER GRANTING MOTION TO
DISMISS ISSUE THREE

On March 27, 2014, Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming Moreno Valley Unified School District (Moreno Valley) and California School for the Deaf -Riverside (School for the Deaf) as the respondents.

On April 4, 2014, Moreno Valley filed a Motion to Dismiss Issue Three alleging that this issue is outside the scope of OAH's jurisdiction. On April 4, 2014, School for the Deaf filed a written notice that it joined Moreno Valley's Motion to Dismiss Issue Three. OAH has not received a response from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain civil rights claims based on violations of Section 504 of the Rehabilitation Act of 1973 (Section 504) codified at title 29, United States Code, section 701 et seq., or the Americans with Disabilities Act of 1990 (ADA) codified at title 42, United States Code, section 12101, et seq.

DISCUSSION

Moreno Valley and School for the Deaf request that OAH dismiss Student's Issue Three, which alleges violations of Section 504 and the ADA, for lack of jurisdiction. Student indicates in her complaint that she anticipates that OAH will dismiss Issue Three, which was included solely for the purpose of exhausting administrative remedies. OAH does not have jurisdiction to hear claims brought under the ADA or Section 504 and accordingly, the motion to dismiss Issue Three is granted.

ORDER

1. Student's Issue Three is dismissed.
2. The matter will proceed as scheduled as to the remaining issues.

DATE: April 10, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings